

RESOLUTION 12 - 2011

A RESOLUTION SETTING A POLICY AND PROCEDURE FOR ZONING PROTESTS IN MADISON COUNTY

WHEREAS, the Montana statutes enabling counties to enact zoning include provision for property owners to protest creating a zoning district or zoning regulations; and

WHEREAS, all protests must be in writing; and

WHEREAS, protests by 50% of the title property ownership in the district is sufficient to prevent creating a zoning district under 76-2-101(5), MCA; and

WHEREAS, either protests by 40% of the real property owners within the district whose names appear on the last-completed assessment roll, OR protests by real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202, MCA or whose property is taxed as forest land under Title 15, chapter 44, part 1, MCA, is sufficient to prevent creating a zoning district or establishing zoning regulations under, MCA 76-2-205 (6); and

WHEREAS, if sufficient protests to creating a zoning district are submitted then the county commissioners may not form the district and may not consider forming a zoning district for one year; and

WHEREAS, a common understanding by property owners and Madison County of the requirements necessary to ensure submitted protests are valid and counted appropriately, and

WHEREAS, only valid protests are used to determine if the percentage protest requirements to prevent creation of the zoning district or establishing the zoning regulations are met; and

WHEREAS, the Madison County Zoning Protest Policy and Procedures as shown in attached Exhibit A describe the elements needed for real property owners to submit a valid protest and the procedures used by Madison County to determine the validity of the protest received, the total number of property owners and/or acreage in the zoning district and the number of protests needed to meet the percentage requirement; and

WHEREAS, the Madison County Zoning Protest Policy and Procedures provides a common understanding of the statutory requirements for a valid protest and determining the percentage of protests received;

NOW, THEREFORE, BE IT RESOLVED, that the Madison County Zoning Protest Policy and Procedures as shown in attached Exhibit A describe the common understanding of how protests are evaluated and counted toward the percentage of protests received.

Effective this 19th day of APRIL, 2011.

PASSED and ADOPTED by the Madison Board of County Commissioners this 19th day of APRIL, 2011.

David Schulz
DAVID SCHULZ, CHAIRMAN

Dan Happel
DAN HAPPEL

James P. Hart
JAMES P. HART

ATTEST: Peggy Kaatz-Stemler, Deputy
Peggy Kaatz-Stemler
Clerk and Recorder

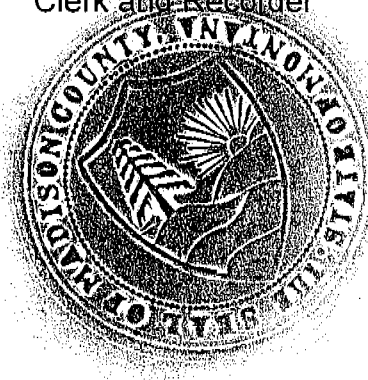


Exhibit A.

MADISON COUNTY ZONING PROTESTS

1. The protest period is 30 days after the “resolution of intention” to create a zoning district and to adopt zoning regulations was published in the newspaper.
2. All protests must be in writing and must be from persons owning real property within the district whose names appear on the last completed assessment roll of the county.
3. Each property owner must complete a protest for each property for which inclusion in the district is protested. Madison County has provided a form for zoning protests (attached). Written protests not using the form must follow the same format as that shown on the form, as follows:
 - a. Name of the zoning district being protested.
 - b. Printed name of the protester.
 - c. Type of ownership (individual, joint tenant, corporation, etc.)
 - d. Mailing address of the protester.
 - e. Legal description of the property in the district owned by the protester. A reference to the recording book and page supported by a copy of each property owner’s deed with recording information is acceptable.
 - f. Number of acres taxed as “agricultural” under §15-7-202, MCA or taxed as “forest land” under Title 15, Chapter 44 , Part 1, MCA.
 - g. Signature of the protester.
 - h. Date of signature.
 - i. If other than individual owner, joint owners or owners in common, the representative capacity of the person signing the protest, their signature, on whose behalf they are signing it, their representative capacity, and the date of the signature. Documentation is required.
4. Additional Items to be submitted with the protest
 - a. (optional) Copies of each property owner’s deed with recording information.
 - b. (optional) Reference to the parcel id (geocode) assigned by the state.
 - c. If other than an individual owner, joint owner, or owner in common, proof power and authority to sign on behalf of the entity that owns the parcel (from bylaws, articles of organization, resolutions, operating agreement, partnership agreement, trust document, letters testamentary):
 - i. Title page with the date, the signature page showing the document was executed, and the page showing the person has the authority to sign on behalf of the entity submitted OR
 - ii. The entire document with unnecessary information redacted.

Exhibit A.

5. All zoning protests will be reviewed by the Madison County Clerk and Recorder's Office for validation. Incomplete, inaccurate or illegible protests will be invalidated. Once a protest is submitted, any changes to the submittal (corrections, changes in ownership, additional documents, etc.) will not be considered in regards to determining the protest validity.
6. A protest may be withdrawn for a period of five (5) working days of the date the protest was submitted.
7. Review by Clerk and Recorder's Office
 - a. Within ten (10) working days of the passage of the "resolution of intention," the Clerk and Recorder will provide an affidavit to the county commissioners stating the number of property owners within the boundaries of the district.
 - b. Within ten (10) working days of receiving a written protest, the Clerk and Recorder will verify that the protest is from a property owner within the boundaries of the district and will return the protest to the county commissioners.
 - c. Within forty (40) days of publication of the "resolution of intention", the Clerk and Recorder will submit an affidavit to the Board of County Commissioners stating the number of property owners within the boundaries of the district, the number of valid signatures, and verification of the percentage of property owners within the boundaries that submitted written protests.
8. Percentage of Property Owners
 - a. The count of property owners within the district will be based on the following:
 - i. An individual shall be counted as one property owner.
 - ii. Each joint tenant of property held jointly shall be counted as one property owner.
 - iii. Each tenant of property held as tenants in common shall be counted as one property owner.
 - iv. A trust shall be counted as one property owner.
 - v. A corporation shall be counted as one property owner.
 - vi. A partnership shall be counted as one property owner.
 - vii. A limited partnership shall be counted as one property owner.
 - viii. A limited liability company is counted as one property owner.
 - ix. A limited liability partnership is counted as one property owner.
 - b. The percentage of protesting property owners will be calculated by dividing the number of valid written protests by the number of property owners in the district.
9. Percentage of Area (when applicable)
 - a. Parcels taxed for agricultural purposes or as forest land will be identified on Madison County's GIS system. Where an entire parcel is not included in the district, the percentage of each such parcel in the district will be calculated.

Exhibit A.

- b. Valid written protests will be compared to the property identified through the GIS and the property marked as "Protested."
- c. The percentage of area protested will be calculated by dividing the number of acres within the district taxed for agricultural purposes or as forest land by the number of acres of such land represented by the valid written protests.

10. Madison County Planning Office

- a. Within twelve (12) working days of the close of the protest period, the Madison County Planning Office shall prepare a report to the commissioners summarizing the written protests. The report shall include:
 - i. Brief description of the zoning district.
 - ii. Total number of parcels in the district.
 - iii. Total number of acres in the district taxed as agriculture or forest land.
 - iv. Total number of property owners in the district.
 - v. Number of valid written protests received and number of protests invalidated.
 - vi. Number of acres taxed as agriculture or forest lands represented by the valid written protests.
 - vii. Percentage of property owners with valid protests.
 - viii. Percentage of area taxed for agricultural purposes or as forest land represented by valid written protests.
 - ix. Conclusion as to whether the board of county commissioners may adopt the resolution creating the zoning district based on whether there are sufficient protests to stop consideration.

MADISON COUNTY ZONING PROTEST FORM

Failure to complete this form accurately and legibly may result in protest being disqualified.¹

NAME OF ZONING DISTRICT BEING PROTESTED: _____

NAME OF PROTESTER²

(must match property title):

(Print Name - as shown on deed)

NAME ON THE DEED IS FOR (Check only ONE):

<input type="checkbox"/>	Individual	<input type="checkbox"/>	Joint Tenant	<input type="checkbox"/>	Tenants in Common	<input type="checkbox"/>	Corporation	<input type="checkbox"/>	LLC	<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Trust
<input type="checkbox"/>	Other (please describe): _____												

MAILING

ADDRESS: _____

(Street or PO Box)

(City, State, Zip Code)

LEGAL DESCRIPTION OF PROPERTY (including parcel id and book and page of recorded deed, if known)³
(you may attach a separate sheet with the description):

NUMBER OF ACRES TAXED AS "AGRICULTURAL" UNDER §15-7-202, MCA OR TAXED AS
"FOREST LAND" UNDER Title 15, Chapter 44, Part 1, MCA: _____

SIGNATURE FOR INDIVIDUAL, JOINT OWNERS OR OWNERS IN COMMON⁴

Signature of Protester (<i>Signature must match property title</i>)		Date
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SIGNATURE FOR COPORATE, PARTNERSHIP, LLC, TRUST OR OTHER ENTITY⁵

- ✓ If other than individual owner, joint owners or owners in common, include the representative capacity of the person signing (for example: *President, Director, Managing Director, Trustee, Member, Personal Representative*).
- ✓ Attach proof of power and authority to sign on behalf of the entity that owns the parcel (for example: title page with the date, the signature page showing the document was executed and the page showing the person has the authority to sign on behalf of the entity from: *articles of organization, by-laws, resolutions, operating agreement, partnership agreement, trust document, letters testamentary*)

NOTE: FAILURE TO ATTACH PROOF THAT THE PERSON SIGNING HAS LAWFUL AUTHORITY TO SIGN ON BEHALF OF THE ENTITY MAY INVALIDATE THIS PROTEST.

Signature of Protester		Date
On behalf of: _____ (entity name)	By its: _____ (representative title)	

Additional comments may be attached.

Return completed form to: Madison County Clerk & Recorder, P.O. Box 366, Madison County Courthouse
100 W. Wallace, Virginia City, MT, 59755

¹ Each property owner is counted in the total number of property owners within the boundaries of the district.

1. For property held jointly, or as tenants in common, each joint tenant or each tenant is counted as one property owner.
2. A trust is counted as one property owner.
3. A corporation is counted as one property owner.
4. A partnership is counted as one property owner. A limited partnership is counted as one property owner.
5. A limited liability company is counted as one property owner.
6. A limited liability partnership is counted as one freeholder.

² Name must be identical to that shown on the deed.

³ Only the property specified will be counted in the protest. The parcel id (geocode) and/or a copy of the deed with the recording information may be submitted as supporting documents.

⁴ Signature must match the name on the deed. If property is held jointly, or as tenants in common, each joint tenant or each tenant must submit a separate petition.

⁵

1. Trust - The trustee of the trust must sign the petition as "trustee of the XXX trust" and provide a copy of the first page of the trust, the signature page of the trust and the page showing that the person signing on behalf of the trust is a current trustee.
2. Corporation - Standard bylaws usually require both the president and secretary sign as "president of XX, Inc" and "secretary of XX, Inc." If bylaws provide otherwise, a copy of the relevant page of the bylaws and the first page of the bylaws must be attached to the signature page.
3. Partnership - All partners must sign, or the non-signing partners must authorize one partner to sign for the partnership and a copy of that authorization must be attached to the signature page. The partners must sign as "partner".
4. Limited partnership - All partners must sign, or the general partner may sign if authorized by all the limited partners to sign for the partnership. A copy of the authorization must be attached to the signature page. The partners must sign as either "general partner" or "limited partner."
5. Limited liability company - Depending on what is authorized by the articles of organization or operating agreement, one member or the manager may sign. A copy of the relevant page of the articles of organization or operating agreement and the first page of the articles of organization or operating agreement must be attached to the signature page. The member must sign as "member" or the manager must sign as "manager."
6. Limited liability partnership - All partners must sign, or the non-signing partners must authorize one partner to sign for the partnership and a copy of that authorization must be attached to the signature page. The partners must sign as "partner."

STATE OF MONTANA MADISON COUNTY

RECORDED: 04/20/2011 4:00 KOI: MADISON CO

Peggy Kaatz Stemler CLERK AND RECORDER

FEE: \$0.00

BY:

TO: FILE 101-E 8 PGS,

Peggy Kaatz Stemler

PM
✓

RESOLUTION 2011-12

Setting Policy & Procedure for
Zoning Protests